WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED

HOUSE BILL No. 4647

(By Mr. Speaker, Mr. Chambers, & Del. Humphreys)

Passed March 10, 1988

In Effect July 1, 1988
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-two, relating to public health; legislative finding; definitions; powers and duties of the director of the department of health; licensure of asbestos abatement project designers, inspectors, contractors, management planners, workers and supervisors; special revenue account; exemptions from notification and licensure; approval of asbestos courses; department must provide training courses for licensure; reciprocity; prohibiting employer discrimination; notice to employees; violations; reprimands; suspensions or revocation of license; orders; hearings; and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-two, to read as follows:

ARTICLE 32. LICENSURE OF ASBESTOS ABATEMENT PROJECT DESIGNER, INSPECTORS, CONTRACTORS, MANAGEMENT PLANNERS, WORKERS AND SUPERVISORS.
§16-32-1. Legislative finding.

The Legislature hereby finds and declares that asbestos is a dangerous toxic substance and harmful to the citizens of this state. Therefore to ensure the protection of the citizens of this state, persons who come into contact with asbestos through abatement, removal, enclosure or encapsulation, should be trained and licensed professionals who know how to deal with asbestos.

It is the intent of the Legislature that this article shall be in addition to all other statutes, rules, and regulations concerning asbestos.


(a) “Asbestos” means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite, and which material contains more than one percent asbestos by weight.

(b) “Asbestos abatement project designer” means a person who specifies engineering methods and work practices to be used during asbestos abatement projects.

(c) “Asbestos abatement supervisor” means a person responsible for direction of asbestos abatement projects.

(d) “Asbestos contractor” means a person who enters into contract for a project to abate, enclose, remove or encapsulate asbestos.

(e) “Asbestos inspector” means a person employed to inspect for presence of asbestos containing materials, evaluate condition of such materials and collect samples for asbestos content confirmation.

(f) “Asbestos management planner” means a person employed to interpret survey results, make hazard assessment, evaluation, and selection of control options or develop an operation and maintenance plan.

(g) “Asbestos project” means an activity involving the inspection for abatement, removal, enclosure or encapsulation of asbestos.
(h) “Asbestos worker” means a person who works on an asbestos project for abatement, removal, enclosure or encapsulation of asbestos.

(i) “Contained work area” means designated rooms, spaces, or other areas where asbestos abatement activities are being performed, including decontamination structures. The contained work area is separated from the uncontaminated environment by polyethylene sheeting or other materials used in conjunction with the existing floors, ceilings and walls of the structure.

(j) “Department” means the department of health.

(k) “Director” means the director of the department of health or the director’s duly authorized representative.

(l) “Encapsulate” means the application of any material onto any asbestos containing material to bridge or penetrate the material to prevent fiber release.

(m) “Enclosure” means the permanent confinement of friable asbestos containing materials with an airtight barrier in an area not used or designed as an air plenum.

(n) “Friable” means material which is capable of being crumbled, pulverized or reduced to powder by hand pressure of which under normal use or maintenance emits or can be expected to emit asbestos fibers into the air.

(o) “Good faith report” means a report of conduct defined in this act as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

(p) “License” means a document authorizing a person to perform certain specific asbestos related work activities.

(q) “Person” means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any individual or entity.
(r) "Waste" means an employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal, state or political subdivision sources.

(s) "Wrongdoing" means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.


The director of health shall administer and enforce this article. The director has the following powers and duties:

(a) To issue licenses and assess fees pursuant to this article and the rules and regulations promulgated thereunder.

(b) To promulgate rules and regulations necessary to carry out the requirements of this article in accordance with the provisions of chapter twenty-nine-a of this code, to include, but not limited to, the required training, the prescription of fees and procedures for the issuance and renewal of licenses.

(c) To approve the training courses administered to licensure applicants and develop an examination and grading system for testing applicants.

(d) The director shall implement a plan, which shall be subject to legislative review in accordance with the provisions of chapter twenty-nine-a of this code, for the issuance and renewal of asbestos abatement project designer's, contractor's, inspector's, management plan developer's, worker's and supervisor's licenses by the first day of July, one thousand nine hundred eighty-eight. Such plan shall meet all federal guidelines.

§16-32-4. Asbestos management planner's license required.

(a) After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for an individual who does not possess a valid asbestos
management planner's license to design a building's or facility's asbestos management plan.

(b) To qualify for an asbestos management planner's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos management planners;

(2) Possess a valid asbestos inspector's license;

(3) Demonstrate to the satisfaction of the director that the applicant is familiar with, and capable of complying fully, with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration, the state departments of health, natural resources and labor, and the state air pollution control commission covering any part of an asbestos project; and

(4) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos management planner's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos management planners to the department and shall pay the applicable fee. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

§16-32-5. Asbestos abatement project designer's license required.

(a) After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for any person who does not possess a valid asbestos abatement project designer's license to specify engineering methods and work practices under asbestos abatement contract to another person.

(b) To qualify for an asbestos abatement project
designer's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for
abatement project designers; and

(2) Demonstrate to the satisfaction of the director that
the applicant is familiar with and capable of complying
fully with all applicable requirements, procedures and
standards of the United States environmental protection
agency, the United States occupational safety and health
administration, the state departments of health, natural
resources and labor, and the state air pollution control
commission covering any part of an asbestos project.

(3) Meet the requirements otherwise set forth by the
director.

(c) Applicants for an asbestos abatement project
designer's license shall submit an application and a
certificate that shows satisfactory completion of the
United States environmental protection agency training
course for asbestos abatement project designers to the
department on the required form and shall pay the
applicable fee to the department. The director may deny
a license if there has been a failure to comply with the
application procedure or if the applicant fails to satisfy
the application criteria. Written notice of denial and an
opportunity for reapplication shall be afforded to all
applicants.

§16-32-6. Asbestos contractor's license required.

(a) After the first day of July, one thousand nine
hundred eighty-nine, it shall be unlawful for any person
who does not possess a valid asbestos contractor's license
to contract with another person to abate, enclose, remove
or encapsulate asbestos.

(b) To qualify for an asbestos contractor's license, an
applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for
contractors;

(2) Demonstrate to the satisfaction of the director that
the applicant and the applicant's employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration, the state departments of health, natural resources and labor, and the state air pollution control commission covering any part of an asbestos project;

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos contractor's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency asbestos training course for contractors to the department on the required form and shall pay the applicable fee to the department. The director may deny a license if there has been a failure to comply with the application procedure or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

(d) Licensed asbestos contractors shall carry out the following duties:

(1) Ensure that each of the applicant's employees or agents who will come into contact with asbestos or who will be responsible for an asbestos project is licensed as an asbestos worker;

(2) Ensure that each asbestos project is supervised by a licensed asbestos abatement supervisor;

(3) Notify the department and all other entities as may be required by state or federal law at least twenty days prior to commencement of each asbestos project. Notification shall be sent by certified mail or hand-delivered to the department;

(4) A licensed asbestos contractor shall keep a record of each asbestos project and shall make the record available to the state departments of health, natural resources and labor, and the state air pollution control commission upon request. Records required by this
section shall be kept for at least thirty years. The records shall include:

(A) The name, address and asbestos worker's license number of the individual who supervised the asbestos project and each employee or agent who worked on the project;

(B) The location and a description of the project and the amount of asbestos material that was removed;

(C) The starting and completion dates of each project and a summary of the procedures that were used to comply with all federal and state standards; and

(D) The name and address of each asbestos disposal site where waste containing asbestos was deposited and the disposal site receipts.

§16-32-7. Asbestos abatement supervisor's license required.

(a) After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for an individual who does not possess a valid asbestos abatement supervisor's license to direct an asbestos abatement project.

(b) To qualify for an asbestos abatement supervisor's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos abatement supervisors;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, United States occupational safety and health administration, the state departments of health, natural resources and labor, and the state air pollution control commission covering any part of an asbestos project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos inspector's license shall
submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos abatement supervisors to the department and shall pay the applicable fee. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

§16-32-8. Asbestos inspector's license required.

(a) After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for an individual who does not possess a valid asbestos inspector's license to work as an asbestos inspector on an asbestos project.

(b) To qualify for an asbestos inspector's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos inspectors;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, United States occupational safety and health administration, the state departments of health, natural resources and labor, and the state air pollution control commission covering any part of an asbestos project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos inspector’s license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos inspectors to the department and shall pay the applicable fee. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria.

(a) After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for an individual who does not possess a valid asbestos worker's license to work as an asbestos worker on an asbestos project.

(b) To qualify for an asbestos worker's license an individual shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos workers.

(2) Demonstrate to the satisfaction of the director that the applicant and the applicant's employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration, the state departments of health, natural resources and labor, and the state air pollution control commission covering any part of an asbestos project.

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos worker's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos workers to the department and shall pay the applicable fee. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

§16-32-10. Special revenue account.

The funds collected from the fees applicable in this article shall be deposited in a special revenue account in the state treasury to be used by the director of the
§16-32-11. Exemptions from notification and licensure.

In an emergency that results from a sudden unexpected event that is not a planned renovation or demolition, the director may waive the requirement of twenty days prior notification by licensed asbestos contractors.

Facilities presently operating under federal O.S.H.A. standards for removing and handling asbestos on owned premises, shall be exempt.

§16-32-12. Approval of asbestos courses; requiring the department to provide training courses for licensure.

A person or organization may apply for department and United States environmental protection agency approval of a course on the health and safety aspects of asbestos abatement, removal, enclosure and encapsulation, by submitting a full description of the curriculum and a written application on forms prescribed by the department.

The department shall make available complete training courses for every license required under this article. During the first year of implementation of this article, the department shall offer all the training courses for licenses in every congressional district in this state. After the first day of July, one thousand nine hundred eighty-nine, the department shall annually offer all the training courses for licenses in at least one location in this state. The director can charge reasonable fees to offset costs of the courses offered.


The director may set standards for accepting licenses issued by other state boards of licensure. The director may grant licenses to individuals from other states if that other state has as stringent licensing requirements

as West Virginia.

§16-32-14. Prohibiting employer discrimination; notice to employees.

(a) No employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee, acting on his own volition, or a person acting on behalf of or under the direction of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste; or because the employee is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

(b) An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations set forth in the provisions of this section.

§16-32-15. Reprimands; suspension or revocation of license; orders; hearings.

(a) The director shall reprimand, suspend or revoke the license of an asbestos project designer, inspector, contractor, management planner, worker or supervisor, if the licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license;

(2) Fails at any time to meet the qualifications for a license or to comply with the requirements of this article or any applicable rules or regulations adopted by the director;

(3) Fails to meet applicable federal or state standards for abatement, enclosure, removal or encapsulation of asbestos; or

(4) Employs or permits an individual without an asbestos worker's license to work on an asbestos project.
(b) The director shall investigate all alleged violations reported to the department. Upon the finding of a violation in connection with any project involving the abatement, enclosure, removal, or encapsulation of asbestos, the director shall issue a cease and desist order directing that all work on the project be halted forthwith. Posting of the cease and desist order on the project site shall constitute notice of its contents to the property owner and all persons working on the asbestos removal project. Where practicable, however, the director shall deliver a copy of such order by certified mail, return receipt requested, to the property owner and to the contractor.

(c) Hearings regarding violations of this article shall be conducted in accordance with the administrative procedures act of chapter twenty-nine-a of this code.

§16-32-16. Penalties.

Notwithstanding any other provision of this code, any person who violates any provision of this article or any rule or regulation related hereto shall be guilty of a misdemeanor.

In any case where a person fails to halt work following the issuance of a cease and desist order by the director, the violation shall be presumed to be willful and shall be assessed a civil penalty of not less than ten thousand dollars nor more than twenty-five thousand dollars for an initial violation and not less than twenty-five thousand dollars nor more than fifty thousand dollars for each subsequent violation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.


Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ... 30th... day of ... 1988.

Governor
PRESENTED TO THE GOVERNOR

Date 3/18/88
Time 4:26 p.m.